

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

JERMAINE MONTIEL,

Plaintiff,

v.

CITY OF SAN JOSE, et al,

Defendants.

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Case No.: C 07-5490 PSG

**PROPOSED VERDICT FORM**

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## PROPOSED VERDICT FORM

**IT IS SO ORDERED.**

Dated: June 7, 2013

Paul S. Gend

PAUL S. GREWAL  
United States Magistrate Judge

## VERDICT FORM

### I. Excessive Force Claims

#### 1. Did either Defendant use excessive force in arresting Plaintiff?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes” to one or both Defendants, go to Question 2 and answer as to each Defendant for whom you answered “Yes” above. If not, go to Section III (Delay of Medical Care Claim).

#### 2. Was the use of excessive force a substantial factor in causing harm to Plaintiff?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes” to one or both Defendants, go to Section II (Constitutional Claim against City of San Jose). If not, go to Section III (Delay of Medical Care Claim).

### II. Constitutional Claim against City of San Jose

#### 3. Did Plaintiff prove that Defendant City of San Jose deprived him of his constitutional rights by maintaining an official policy or custom of unlawful seizure or excessive force?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes,” go to Question 4. If not, go to Section III (Delay of Medical Care Claim).

#### 4. Did Plaintiff prove that the City of San Jose’s official policy or custom was the moving force behind a violation of his constitutional rights?

\_\_\_\_\_ Yes \_\_\_\_\_ No

Go to Section III (Delay of Medical Care Claim).

### III. Delay of Medical Care Claim

#### 5. Did Defendants act with deliberate indifference to a serious medical need of Plaintiff?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes” to one or both Defendants, go to Question 6 and answer as to each of the Defendants for whom you answered “Yes” above. If not, go to Section IV (Negligence).

6. Was the deliberate indifference a substantial factor in causing harm to Plaintiff?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

Go to Section IV (Negligence).

IV. Negligence

7. Were either of the Defendants negligent?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes” to one or both Defendants, go to Question 8 and answer as to each of the Defendants for whom you answered “Yes” above. If not, go to Section V (Bane Act Claim).

8. Was the negligence of any Defendant a substantial factor in causing Plaintiff’s harm?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes” to one or both Defendants, go to Question 9. If not, go to Section V (Bane Act Claim).

9. Was Plaintiff negligent?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes,” go to Question 10. If not, go to Section V (Bane Act Claim).

10. Was Plaintiff’s negligence a substantial factor in causing his harm?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes,” go to Question 11. If not, go to Section V (Bane Act Claim).

11. What percentage of responsibility for Plaintiff’s harm do you assign to Plaintiff?

\_\_\_\_\_ %

Go to Section V (Bane Act Claim).

## V. Bane Act Claim

12. Answer this question only if you answered “Yes” to any Defendant in Questions 2 (Excessive Force Claim), 4 (Constitutional Claim against City of San Jose), or 6 (Delay of Medical Care Claim). If not, go to Section VI (Battery Claim). Did Defendants interfere with Plaintiff’s constitutional rights through threats, intimidation, and coercion?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

Go to Section VI (Battery Claim).

## VI. Battery Claim

13. Did Defendants touch Plaintiff with the intent to harm or offend him?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes” to one or both Defendants, go to Question 14 and answer as to each Defendant for whom you answered “Yes” in Question 13. If not, go to Section VII (False Arrest Claim).

14. Did Defendants use unreasonable force when arresting Plaintiff?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes” to one or both Defendants, go to Question 15. If not, go to Section VII (False Arrest Claim).

15. Did Plaintiff consent to the use of that force?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “No,” go to Question 16 and answer as to each Defendant for whom you answered “Yes.” If not, go to Section VII (False Arrest Claim).

16. Was Defendants’ use of unreasonable force a substantial factor in causing harm to Plaintiff?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

Go to Section VII (False Arrest Claim).

VII. False Arrest Claim

17. Did Defendants arrest Plaintiff without a warrant?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes” to one or both Defendants, go to Question 18 and answer as to each Defendant for whom you answered “Yes.” If not, go to Section VIII (Intentional Infliction of Emotional Distress Claim).

18. Did Plaintiff either rush toward other officers who were investigating a crime or appear as if he could not care for himself or others because of intoxication?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “No,” go to Question 19 and answer as to each Defendant for whom you answered “Yes” in Question 17. If not, go to Section VIII (Intentional Infliction of Emotional Distress Claim).

19. Was Defendants’ conduct a substantial factor in causing harm to Plaintiff?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

Go to Section VIII (Intentional Infliction of Emotional Distress Claim).

VIII. Intentional Infliction of Emotional Distress Claim

20. Was Defendants’ conduct lawful and consistent with community standards?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes” to one or both Defendants, go to Question 21 and answer as to each Defendant for whom you answered “Yes.” If not, go to Question 22.

21. Did Defendants have a good-faith belief that they had a legal right to engage in the conduct?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “No” to one or both Defendants, go to Question 22 and answer as to each Defendant for whom you answered “No.” If not, go to Section IX (Tort Liability against the City of San Jose Claim).

22. Was Defendants' conduct outrageous?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered "Yes" to one or both Defendants, go to Question 23 and answer as to each Defendant for whom you answered "Yes." If not, go to Section IX (Tort Liability against the City of San Jose Claim).

23. Did Defendants intend to cause Plaintiff emotional distress?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered "Yes" to one or both Defendants, answer Question 24. If not, go to Section IX (Tort Liability against the City of San Jose Claim).

24. Did Plaintiff suffer severe emotional distress?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered "Yes," go to Question 25 and answer as to each Defendant for whom you answered "Yes" in Question 23. If not, go to Section IX (Tort Liability against the City of San Jose Claim).

25. Was Defendants' conduct a substantial factor in causing Plaintiff's emotional distress?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

Go to Section IX (Tort Liability against the City of San Jose Claim).

#### IX. Tort Liability against the City of San Jose Claim

Answer Questions 26 and 27 only if you answered "Yes" to one or both Defendants in Questions 8 (Negligence Claim), 12 (Bane Act Claim), 16 (Battery Claim), 19 (False Arrest Claim) or 25 (Intentional Infliction of Emotional Distress Claim). If not, go to Section X (Damages).

26. Were Defendants acting within the scope of their employment with the City of San Jose when they harmed Plaintiff?

Officer Matt Williams \_\_\_\_\_ Yes \_\_\_\_\_ No

Sergeant Carl Sheppard \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered "Yes" to one or both Defendants, go to Question 27. If not, go to Section X (Damages).

27. What was the percentage of responsibility for each of the Defendants and the City of San Jose?

\_\_\_\_\_ % Officer Matt Williams      \_\_\_\_\_ % Sergeant Carl Sheppard  
\_\_\_\_\_ % City of San Jose

Go to Section X (Damages).

X. Damages

Only answer Question 28 if you answered “Yes” to Questions 4 (Constitutional Claim against City of San Jose) or 26 (Tort Liability against City of San Jose) or as to one or both Defendants in Questions 2 (Excessive Force Claim), 6 (Delay of Medical Care Claim), 8 (Negligence Claim), 12 (Bane Act Claim), 16 (Battery Claim), 19 (False Arrest Claim), or 25 (Intentional Infliction of Emotional Distress Claim). If you answered “No” to all of those questions, stop here, answer no further questions, and have the foreperson sign and date this form.

28. What is the total amount of damages, if any, suffered by Plaintiff?

\$ \_\_\_\_\_

Go to Question 29.

29. Did Plaintiff fail to use reasonable effort to mitigate his damages?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

If you answered “Yes,” go to Question 30. If not, go to Question 31.

30. How much of Plaintiffs’ damages could have been mitigated by Plaintiff’s reasonable efforts?

\$ \_\_\_\_\_

Go to Question 31.

31. Did Defendants or the City of San Jose engage in conduct with malice, oppression, or fraud?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

If you answered “Yes,” go to Question 32. If not, stop here, answer no further questions, and have the foreperson sign and date this form.

32. What amount, if any, do you award in punitive damages?

\$ \_\_\_\_\_

Have the foreperson sign and date this form.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

